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AMONG THE NEW DECISIONS

Mr. Flatdweller Sees His Lawyer

or

Tenants and Their Troubles

ISN'T it a peculiar thing that, in going to the theater for the purpose of forgetting the cares and troubles of our daily tasks, if the play happens to be about the very occupation in which we are engaged, we will instantly become attentive and alert, because of the vital part our profession plays in our lives?

The instant the curtain rises disclosing the familiar scene of the law office with its rows of books, and we see seated at the desk, deeply engrossed in a pile of work, one of us going through the daily grind, we sit up in our seats and await rather expectantly what is to come next.

A glance at our programs shows that the lawyer is Mr. Worldly Wiseman, an attorney of good standing, likewise we see billed the name of Mr. A. Flatdweller, a client with a complaint. "Mr. Flatdweller Sees His Lawyer" is the title of the play.

A telephone bell rings, Mr. Wiseman looks up from his work, takes down the receiver, and in a business-like voice speaks into the instrument:

"Hullo! Yes. Yes, this is Wiseman speaking. Yes, I can see you right away. You'll be right over then? Very well." And he hangs up the receiver.

In a very few moments the door, showing the inverted name of the attorney on the frosted glass, is

hastily opened, and a middle-aged man with a harassed appearance comes rushing in and greets the lawyer.

"Well Mr. Flatdweller—what's in the wind this morning?" asks the attorney, solicitously.

"Trouble. My apartment, I've been in for less than a month, is impossible," replies the agitated client.

"And you have made up your mind to move out?" questions the lawyer.

"Move? Yes. Not a day longer will my family and I put up with what we have had to endure for the past two weeks, even if we have to go to a hotel. Now, then, how about my lease?" he asks, anxiously. "Have I got to go on paying rent to old Skinnem for the rest of the year for that ramshackle, malodorous, vermin-infested icebox of an apartment?"

"You might sublet," suggests the attorney.

"Can't do it without Skinnem's consent," answers the worried man; "the lease says so. And even if I did, I wouldn't break even. I have a conscience, if Skinnem hasn't, and I wouldn't offer the place to a yellow dog without giving him a hint as to what he would be up against. No," determinedly, "I won't take that way out unless I have to. What I want to know is, when I rent a place that I can't live in, have I got to pay just the same? If the law says I have to, then I say that the law is an accessory after the fact, as you lawyers put it, to the crime of grand larceny, or at least getting property under false pretenses."

This assertion of the client puts us on the defensive immediately, and we listen to hear how the actor lawyer will uphold the profession.

"Don't be too hard on the law—maybe it isn't so bad as you think," he answers quietly, but firmly.

"I'm afraid it is. I went to Skinnem to complain about the condition of the premises and he practically told me to go to—the place I hope he'll land in. You know how independent landlords are since housing accommodations became so scarce, and how they hate to spend a cent for repairs. And when I got up on edge a bit, and started to tell him a few things, what does he do but pull down a law book and show me a passage that said that there is no warranty, upon the letting of a house or apartment, that it is reasonably fit for habitation. Is that the truth?"

"The truth, and nothing but the truth, but fortunately not quite the whole truth. There may be some weak points in Mr. Skinnem's defensive armor. Even Achilles was not quite invulnerable, you remember. Now, then, let's get at the facts. What did you know about

this apartment when you leased it?"

"Only what the usual inspection disclosed," replied Mr. Flatdweller. "Size and arrangement of rooms satisfactory, lighting good, decorations fair."

"The objectionable features didn't appear till later, then?" queries the lawyer.

"No," answers Flatdweller. "That is, the rooms did smell a trifle musty, but I supposed that it was because they had been shut up since the last tenant moved out—at least, the janitor said 'moved,' but I have heard since that he died there."

"His ghost hasn't been haunting you?" smilingly suggests the lawyer.

"No, we are haunted only by smells. The strange night noises we hear are only the rats and mice running and squealing in the walls."

"The smells are what you complain of, then?" is the next question.

"Principally—they are affecting the health of all of us. My wife and the girls all have sore throats. I am convinced that there is something radically wrong with the plumbing. But we haven't been able to get rid of the bugs."

"Cockroaches in the pantry, I suppose?"

"Overrun with 'em, but what has annoyed us the most is—I blush to tell of it—the bedbugs. Of course, we didn't know it till we moved in, but the place is infested with them."

"Are there any more items in the bill?" again asks Mr. Wiseman.

"Yes, the apartment is supposed to be heated, but it isn't. Only for an occasional rattling in the pipes, you'd suppose that there was no steam in them. My wife says she is willing to wager that the janitor only clatters on them with a piece of iron once or twice a day, to delude us into believing that it is going to warm up. We can't even go to bed to keep warm, on account of the bugs. Now I ask you, if I am not getting what I am paying for, do I have to keep paying?"

"Let us look into it a little," Mr. Wiseman says. "Fortunately, we have a very convenient collection of the authorities in this book."—He goes to the bookcase and selects therefrom one of the buckram-covered books.—"4 A.L.R. at—let me see—page 1453; here we have it: 'Effect of nonhabitability of leased dwelling or apartment.' *This note states that while the great weight of authority is to the effect that, in the absence of statute, there is no warranty implied, in the letting of an unfurnished house or tenement, that it is reasonably fit for habitation, or that it will continue habitable, the terms of the lease may be such as to raise an implied

(Continued on page 86)

*See also 16 R. C. L. 772 et seq.

A Soldier's Holographic Will

A RECENT news item relating to the letter of a soldier in the World War, to his sweetheart, in which he expressed a desire that she should have his property "if anything should happen" to him, and which was probated as a will, recalls the liberal rules which have been applied to wills of soldiers and sailors. The letter in question was one of intense human interest. The writer was an artist and his sweetheart an art student. The letter began with a quotation from a poem; following this was a desire expressed that his sweetheart should send him some cigarettes and also some numbers of an artist's magazine; then the artistic spirit surged up in him, and he said: "The world is wonderful over here, and fall is coming with its golden leaves (and I can't get time to paint). It's wonderful here, these old towns, with their roofs and picturesque chimneys against the sky. We will come back here some time, you and I—but perhaps I like California best by turns."

But to return to the part of the letter about which this article is written; that was contained in the following brief sentence: "The Liberty bonds are all paid up, and they are made out in your name, so if anything should happen to me they will come to you with the remainder of my money and effects." The letter ended with: "Love to all, and remember—no worrying." A few weeks after it was written the writer fell in action and the letter was offered as his will. Having been written, dated, and signed wholly in the handwriting of the decedent, it was held to be a valid holographic will. The courts have been quite strict in the case of holographic wills, generally, requiring every part to be in the handwriting of the decedent. A will written on a stationer's blank form, in which the decedent has made use of the words printed in the form, is not sufficient, as appears from the Utah case of Re Wolcott, 180 Pac. 169, annotated in 4 A.L.R. 727.

Even nuncupative wills of soldiers and sailors were validated by the original Statute of Frauds (29 Car. II. chap. 3, § 23), which provided that, notwithstanding that act, any soldier being in actual military service, or any mariner or seaman being at sea, may dispose of his movables, wages, and personal estate as he or they might have done before the making of the act.

For a discussion of soldiers' and seamen's wills, the note in 4 B. R. C. 899, may be consulted. W. A. E.

The Cost of Doing a Favor

or

The Liability of Gratuitous Bailees

A MAN hands a friend a pair of diamond earrings in a crowded theater lobby, asking him to appraise them. One of them falls to the floor and is lost. Is the friend liable?

Rather an unusual state of facts, yet the Massachusetts case which embodies them (Rubin v. Huhn, 229 Mass. 126, 118 N. E. 290, 4 A.L.R. 1190) involves a principle which has a wide application in the ordinary transactions of life. What liability, for instance, does a business man incur who allows a friend to keep valuables in his safe, from which they are taken by burglars? Is a bank, which has offered gratuitously to become the custodian of Liberty bonds, liable for their embezzlement by an employee? Under what circumstances is one who, as an accommodation to a friend, undertakes to pay a bill, or make a deposit in the bank (as in Ridenour v. Woodward, 132 Tenn. 620, 179 S. W. 148, 4 A.L.R. 1192) liable for the loss of the money? Is a purchaser of goods who attempts to return them upon finding that they are not what he ordered (as in Altman v. Aronson, 231 Mass. 588, 121 N. E. 505, 4 A.L.R. 1185) liable where they fail to reach the seller? What is his liability where he has undertaken to deal with the subject of the bailment in a manner not warranted by his instructions, and the property is lost?

The solution of such questions as these may be found in an extensive annotation in 4 A.L.R. 1196, on "Duty and liability of gratuitous bailees or mandataries." *This annotation shows that the phrase commonly found in the mouth of the courts, that "a gratuitous bailee is bound only to exercise a slight degree of care, and is liable only for gross negligence," has received so varied a content of meaning as to be no longer satisfactory as a formula of decision; and that, in fact, it has little to do with the result. Its chief use is to differentiate between the theoretical responsibility of a bailee without reward, and that of bailees for hire or for their own benefit. Its employment, however, has tended to cause the courts to overlook the fact that it defines the responsibility of a gratuitous bailee only in vacuo, i. e., in the absence of any circumstances other than the bare fact of bailment, and to divert at-

*See also 3 R. C. L. 99.

tention from the inquiry on which it properly should be centered, namely, What is the undertaking of the bailee in the particular case, as implied from the accompanying circumstances and defined by the express understanding between the parties? This undertaking may be such as to raise the responsibility of a gratuitous bailee to the same level as that of a bailee for hire.

The true view, as deduced from the decisions, appears to be that the care which it is incumbent upon a gratuitous bailee to exercise will depend upon the nature, value, and properties of the subject of the bailment, the circumstances under which the bailment is made, and sometimes from the character and confidence and particular dealings of the parties,—in other words, upon the terms of the implied undertaking of the bailee.

The first article of his implied undertaking is, in the case of a depositary, that he will take the same care of the property intrusted to him as he might reasonably be expected to take of his own property of the same character; in the case of a mandatary, that he will exercise the same diligence that he might reasonably be expected to exercise in his own affairs. If he is known to possess special facilities for safe-keeping, it becomes an implied article of his undertaking that he will use them; or, if his profession or situation is such as to imply skill, he is bound to exercise such skill.

Although a gratuitous bailee is not ordinarily bound to the exercise of the same active diligence as is a bailee for reward, in some respects their liability is identical. Thus, it is the duty of a bailee, whatever the character of the bailment may be, when its purpose has been fully satisfied and performed, to redeliver the thing bailed to its lawful owner, upon request, or to account for his failure to do so. The bailee is liable for the loss or destruction of the bailed property while in his possession, after being requested to return it to the bailor, if a reasonable time has elapsed to enable him to do so.

So, also, if a gratuitous bailee undertakes to deal with the subject of the bailment in a manner not warranted by his instructions, express or implied, and the property is lost, he is liable therefor, irrespective of any want of due care on his part, unless his act is ratified by the bailor with full knowledge of the circumstances.

And if a gratuitous bailee uses the subject of the bailment for his own purposes, he is in the position of having converted the property, and hence is absolutely liable therefor, even where, after he has undertaken to replace it, it is lost without his fault.

E. S. O.

Liability for Injuries Caused by Bursting of Bottle

OWING to the frequency with which bottles in which food and drink are sold break or explode, and especially in view of the present extensive use of bottled goods, of seeming practical importance is the decision in the recent case of Grant v. Graham Chero-Cola Bottling Works, 176 N. C. 256, 97 S. E. 27, annotated in 4 A.L.R. 1090, which holds that one negligently putting up a highly charged beverage in bottles is liable for injuries to a customer caused by the bursting of a bottle, even though there were no contractual dealings between the dealer and the customer.

However, it seems that to hold the manufacturer or bottler liable for injuries to one with whom there is no privity of contract, resulting from the breaking or bursting of a bottle containing a commodity not ordinarily or intrinsically dangerous, it must appear that the seller had knowledge of the dangerous condition of the bottle and its contents. This conclusion is supported by both O'Neill v. James, 138 Mich. 567, 110 Am. St. Rep. 321, 101 N. W. 828, 5 Ann. Cas. 177, 17 Am. Neg. Rep. 561, 68 L.R.A. 342, where a bottle of champagne cider exploded, and Colyar v. Little Rock Bottling Works, 114 Ark. 140, 169 S. W. 810, where an overcharged bottle of ginger ale burst.

And the decided weight of authority is to the effect that the rule Res ipsa loquitur does not apply to the breaking or exploding of a bottle in which a commodity ordinarily harmless is sold (see Wheeler v. Laurel Bottling Works, 111 Miss. 442, 71 So. 743, L.R.A.1916E, 1074; Dail v. Taylor, 151 N. C. 284, 66 S. E. 135, 28 L.R.A.(N.S.) 949; Cashwell v. Fayetteville Pepsi-Cola Bottling Works, 174 N. C. 324, 93 S. E. 901; and Glaser v. Seitz, 35 Misc. 341, 71 N. Y. Supp. 942), although the contrary has also been held (see Payne v. Rome Coca-Cola Bottling Works, 10 Ga. App. 762, 73 S. E. 1087).

In a great many instances there is some element of alleged negligence in addition to the bursting or exploding of the container, so that the general question in most cases is, Under what, if any, circumstances, in addition to the mere bursting of a bottle, liability for injuries caused by such an accident arises? Upon this phase of the question the general rule is that principles

applicable to injuries arising from the marketing of commodities not inherently or intrinsically dangerous govern the cases. Under this rule, soft drinks, such as ginger beer, ginger ale, cream soda, coca-cola, and pepsi-cola, aërated and charged waters, and champagne cider, have been regarded as ordinarily harmless commodities. As to champagne cider, however, there seems to be a difference of judicial opinion, it having been regarded in O'Neill v. James, supra, as an article of commerce usually harmless in itself, whereas in Weiser v. Holzman, 33 Wash. 87, 99 Am. St. Rep. 932, 73 Pac. 797, the court proceeded upon the theory that it is a dangerous explosive when bottled.

G. J. C.

Monkeying with the Prohibitory Law

"SUBTERFUGES to escape the provisions of the Prohibition Law may be expected to develop varying degrees of genius," states the New York Times, "and may even surpass the method of the Nova Scotia saloon keeper who employed a trained monkey to tend bar.

"A certain county in the Cape Breton district of Nova Scotia adopted local option a few years ago, and in his reading of the prohibitory law the saloon keeper of a small village found that the penalties for infraction were applicable only to 'persons.'

"His trained monkey was therefore pressed into the business of passing drinks over the bar and collecting the money therefor.

"Of course his stocks were confiscated when the authorities discovered the scheme, but doubting whether they would be able to overcome the technicality that he had not sold liquor nor employed a 'person' to do so, the saloon keeper escaped prosecution."

It would seem to be clear that a monkey is not a "person" within the meaning of a statute using that term. It is an elementary rule of statutory construction to give to words and phrases the same meaning that is attached to them when found in general use. The common signification of the term "person" as defined by Webster is "a living soul; a self-conscious being; a moral agent; especially a living human being; a man, woman, or child; an individual of the human race." This definition is quoted with approval in United States ex rel. Standing Bear v. Crook, 5 Dill. 453, Fed. Cas. No. 14,891.

That a dog is not a "person,"

within the meaning of a statute authorizing "any person" to kill dogs found running at large, is held in Heisrodt v. Hackett, 34 Mich. 283, 22 Am. Rep. 529, where such statute was set up as a defense in an action brought to recover damages for the loss of plaintiff's dog, which was killed by the dog of the defendant.

A distinction denied to the canine cannot well be claimed for the simian species.

In the absence of statutory limitations or restrictions, one who sells liquor in violation of law, by means of a trained animal or some ingenious mechanism, would doubtless be as guilty as if he had made the illegal sale directly, since, as a general rule, his liability extends to unlawful sales made with his express or implied authority, or with his knowledge or consent.

The general question of criminal responsibility for the sale of intoxicating liquors by a partner, servant, or agent is discussed in a series of notes in 41 L.R.A. 660; 16 L.R.A.(N.S.) 786; 20 L.R.A.(N.S.) 321, and 33 L.R.A.(N.S.) 419. See also 15 R. C. L. 356.

Test of Insanity Precluding Trial or Punishment for Crime

THE common law, as a matter of humanity, forbade the trial, sentencing, or execution of an insane person for a crime, while he continued in that state.* To justify a suspension of criminal proceedings for this reason, there must be a question whether the accused is suffering from mental impairment, either under the form of idiocy, intellectual or moral imbecility, or the like, which renders it probable that he cannot, as far as may devolve upon him, have a full, fair, and impartial trial. State v. Arnold, 12 Iowa, 479.

This inquiry involves such considerations as whether the accused is mentally competent to comprehend his position, or to appreciate the charge against him or the proceedings thereon, or to make a rational defense, or to render his attorneys such assistance as a proper defense to the indictment preferred against him demands. "The common sense and feeling of mankind," observes the court in Kinloch's Case, 18 How. St. Tr. 395, "the voice of nature, reason, and revelation, all concur in this plain rule, that no man is to be condemned un-

*See also 14 R. C. L. 605.

heard; and consequently no trial ought to proceed to the condemnation of a man who, by the providence of God, is rendered totally incapable of speaking for himself, or of instructing others to speak for him."

This ancient rule was applied in United States v. Chisolm, 149 Fed. 284, where the court, on a suggestion of the insanity of the accused, suspended the trial and submitted to the jury the question whether the prisoner, at the time, was possessed of sufficient mental power and had such understanding of his situation as to readily comprehend his condition with reference to the proceedings against him, and such coherency of ideas, control of the mental faculties, and the requisite power of memory as would enable him to testify in his own behalf, if he so desired, and otherwise to properly and intelligently aid his counsel.

The rule, being based upon the incapacity of the accused to make a rational defense, has been extended to cases where the incapacity arose from intoxication. Taffe v. State, 23 Ark. 34.

The test to be applied in determining the question whether one about to be executed is sane or insane is stated in the New Mexico case of State v. Smith, 176 Pac. 819, annotated in 3 A.L.R. 83, to be whether or not such person at the time of the examination, from the defects of his faculties, has sufficient intelligence to understand the nature of the proceedings against him, what he is tried for, the purpose of his punishment, the impending fate which awaits him, and a sufficient understanding to know any fact which might exist which would make his punishment unjust or unlawful, and the intelligence requisite to convey such information to his attorneys or the court. If he has, then he is sane; otherwise, he is insane, and should not be executed.

In Ex parte Schneider, 21 D. C. 433, the facts that the accused, about the time of his sentence for the crime of murder, neglected his personal appearance and became slovenly and unkempt, that he refused to eat because of an alleged delusion that his food was poisoned, that he asserted that he could not sleep, and also expressed unfounded beliefs and seemed to be afflicted with delusions, were held wholly insufficient to justify postponing the execution, in view of contradictory testimony and the probability that the accused was feigning insanity.

An interesting incident is noted by the late Lord Kingsburgh in his "Life Jottings," concerning a prisoner, charged with murder, whom he had defended. The brutality of the crime was such that a majority of the jury not only convicted, but added a rider, affirming that the

prisoner was sane. "The man was hopelessly mad," wrote Lord Kingsburgh. "The doctors sent to see him were satisfied of that, and the sentence was not carried out. A crucial test applied was that while one of them put his finger lightly on the pulse, the other suddenly said: 'By-the-by, Miller, when is it you are to be hanged?' There was not a tremor or a change of countenance or acceleration of the pulse, and, looking up, he said quite simply, 'I think it's Tuesday week, if I'm not mistaken.'"

Dead Men's Shoes

IN AN address before the House of Representatives, Honorable James O'Connor of Louisiana related the following interesting incident:

"Years ago one of the most distinguished gentlemen in the state of Louisiana, and one of the most prominent civilians in the legal history of this country, who was going down by some cruel stroke of fortune into poverty, spent his declining days in reading history and telling stories, and he told me that Jean Jacques Rousseau, when he was at the height of his literary fame, received a letter from a Russian nobleman, in which 'Jean Jacques' was told that his philosophical writings had so commended themselves to this gentleman, who was born to a fortune and had acquired still greater fortune, that he had made a will that day and left to Rousseau a million rubles, and Jean Jacques Rousseau, in the estimation of his confrères and of the then literary world, proved that he was a great philosopher by writing back to the nobleman: 'If you love me on account of my writings in behalf of the world, as you evidently do in making that will, destroy the will instantly and give me an annuity, and then I will wish that you may live forever, whereas, if that will should remain in existence, I will pray almost hourly that you die in order that I may come into fortune. Do not place me between my duty and that which is despicable in human nature, but which constantly asserts itself, self-interest.'"

This lamentable truth, pointed out by Rousseau with so much candor, has long been recognized. More than 2,000 years ago, Terence declared: "Look you, I am the most concerned in my own interests." And a similar sentiment was voiced by Lord Byron in Lara:

"'Yet doth he live,' exclaims the impatient heir,
And sighs for sables which he must not wear."

The law has taken note of this frailty by admitting in proof of motive in homicide cases, evidence that deceased had made a will giving property to the accused. Thus, the fact that a wife charged with having poisoned her husband was the sole devisee in his will was held admissible as bearing on the question of motive, in State v. Kuhn, 117 Iowa, 216, 90 N. W. 733. Similarly, in People v. Buchanan, 145 N. Y. 1, 39 N. E. 846, where a husband was charged with having administered poison to his wife, evidence that just before their marriage the wife had executed a will giving all her estate to her husband (if any) was held to have been properly received on the question of motive. Such evidence is held admissible in Golin v. State, 37 Tex. Crim. Rep. 90, 38 S. W. 794, although the will was invalid, where the accused believed it to be valid.

The rule in homicide cases, as laid down in 13 R.C.L. 910, is that "where the purpose of evidence is to disclose a motive for the killing the courts are very liberal in permitting its introduction, and anything and everything that might have influenced the prisoner to commit the act may, as a rule, be shown."

A somewhat analogous case arises where persons have been induced to convey their property in consideration of support, only to find that the grantee soon regards their continued existence as a burdensome charge upon him, which he neglects or refuses to honor. "The intervention of equity in such cases," it is stated in 4 R. C. L. 509, "is sanctioned on the theory that the neglect or refusal of the grantee to comply with his contract raises a presumption that he did not intend to comply with it in the first instance, and that the contract was fraudulent in its inception, wherefore a court of equity will not permit him to enjoy the conveyance so obtained. In such cases, the existence of equitable jurisdiction is not dependent upon the inadequacy of the legal remedy, but cancelation may be sought, irrespective of any question of a remedy at law. It should be noted, however, that while in many jurisdictions equity has granted relief on the sole ground that there is no adequate remedy at law for breach of the terms of a conveyance in consideration of support, others have denied equitable relief where there was an absence of fraud, on the theory that for such a breach the grantor has an adequate remedy at law. . . . To entitle one to a decree of cancelation, the failure to perform on the part of the grantor must be substantial and in relation to material matters; and if the grantor prevents the grantee from carrying out the contract, there can be no presumption of fraud which will justify the setting aside of the deed."

The Uncertain Witness

THAT a witness is uncertain as to either the observation or the recollection of a fact concerning which he is asked to testify, and qualifies his statements by a phrase expressive of his unwillingness to testify positively, has been held in numerous cases not to affect the admissibility of his evidence. It has, however, frequently been stated that the probative force of the testimony may be affected by the qualifying phrase, and that it is for the jury to weigh the evidence as given. "Witnesses are not required to speak with such confidence as to exclude all doubt in their minds," said the court in Hoitt v. Moulton, 21 N. H. 586. "If the fact is impressed on the memory, but the recollection does not rise to positive assurance, it is still admissible to be weighed by the jury."

The testimony thus qualified should relate to a matter of fact which the witness is conveying to the court and jury, uninfluenced by any mental operations on his part. It is said that the "impression" of a witness, derived from recollection, is competent, but not an impression which is a matter of deduction.

"I think," is one of the terms frequently used by this class of witnesses. In Abbott v. Church, 288 Ill. 91, 123 N. E. 306, 4 A.L.R. 975, it is held that a witness who prefaces his testimony by these words should be taken as testifying to what he remembers. Testimony thus qualified has been admitted where witnesses have testified as to the identity of a horse mentioned in a mortgage; as to what a certain person said to the witness; as to who made certain statements; as to whether the witness placed a note as collateral or additional security; as to whether witness and a companion looked before going upon railroad tracks; as to the nature of liquor purchased; as to the quantity of goods received, and the like.

Other qualifying phrases much favored by witnesses are, "I believe," "my impression," "my best judgment." Cases dealing with the effect of the use of these and similar expressions, to indicate indistinct observation or recollection, are gathered in the note which accompanies the case last cited in 4 A.L.R. 975.

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Recent Important Cases

Automobile — *statutory liability.* A statute making the owner of an automobile liable for injuries done by his bailee in the use of the car, while in the performance of the owner's business, is held to apply to vehicles driven for pleasure as well as profit in the Connecticut case of Wolf v. Sulik, 106 Atl. 443, annotated in 4 A.L.R. 356.

Bank — *liability for dishonoring check.* Proof of actual damages is held not necessary in the Arkansas case of McFall v. First Nat. Bank, 211 S. W. 919, annotated in 4 A.L.R. 940, to enable a merchant or trader to recover substantial damages from a banker who dishonors his checks when he has funds on deposit.

Bank — *liability for sending check to wrong drawee.* The maker of a check is held in Cohen v. Tradesmen's Nat. Bank, 262 Pa. 76, 105 Atl. 43, to have no right of action against a bank with which it was deposited for collection, for sending it to the wrong bank and returning it marked, "No funds," when it was returned by the bank to which it was sent, under the indorsement, "Wrong bank."

The liability of a bank to an obligor of paper, for negligence in making collection, is treated in the note accompanying this case in 4 A.L.R. 518.

Bulk Sales Law — *applicability to farmer.* A sale of a farmer's stock and utensils is held in Weskalnies v. Hesterman, 288 Ill. 199, 123 N. E. 314, annotated in 4 A.L.R. 128, to be within the provisions of a Bulk Sales Law, making void as against creditors the sale in bulk of the major part of a stock of merchandise, or other goods and chattels of the vendor's business, otherwise than in the ordinary course of trade.

Carrier — *negligence — space between platform and car.* It is held not negligence in MacGilvray v. Boston Elev. R. Co. 229 Mass. 65, 118 N. E. 166, for a carrier operating subway trains to leave a space 12 or 13 inches wide between its platforms and cars, into which an intending passenger is pushed to his injury.

The subject of injury to a passenger because of lateral space left between the station platform and cars is treated in the note following this case in 4 A.L.R. 283.

Carrier — *taxicab company.* A taxicab company which holds itself out as ready to receive and transport all who apply for passage and are ready to pay for the service is held a common carrier in Carlton v. Boudar, 118 Va. 521, 88 S. E. 174, 4 A.L.R. 1480.

Carrier — *automobile truck — stopping place.* One contracting to transport passengers by automobile truck is held not to breach his contract by failing to stop to let them alight directly opposite the gate leading to their residence, in Dantzler Shipbuilding & Dry Dock Co. v. Hurley, 119 Miss. 473, 81 So. 163, accompanied in 4 A.L.R. 1487, by a note on the duty and liability of a carrier of passengers for hire by automobile.

Check — *consent to await bank's convenience for payment — effect.* The drawer of a check is held not released in the Arizona case of Empire-Arizona Copper Co. v. Shaw, 181 Pac. 464, annotated in 4 A.L.R. 1229, by

the payee's consent to return later for his money upon the presentation of the check for payment, in order to accommodate the bank, which fails before the check is again presented for payment.

Constitutional law — *lease extending beyond minority of ward.* Permitting a guardian to grant leases for mining coal from his ward's land, to extend beyond the minority of his ward, is held to violate the constitutional rights of the latter to acquire and protect property and pursue happiness, in Lawrence E. Tierney Coal Co. v. Kash, 180 Ky. 815, 203 S. W. 731, annotated in 4 A.L.R. 1540.

Corporation — *liability of directors — rescission of contract — motive.* Members of a board of directors of a corporation are held not liable in damages in Hammond v. Sully, 48 App. D. C. 320, for rescinding a contract to take over stock of another corporation, to one who was to dispose of the stock at a profit to himself, merely because the resolution was passed for the purpose of injuring the rights of such person.

The question of motive as affecting the personal liability of directors in voting for acts not in themselves illegal is discussed in the note following this case in 4 A.L.R. 160.

Covenant — *not to engage in business — assignment.* A covenant by the vendor of a business not to re-engage in such business in the town where it is located for a period of years may be enforced, it is held in the Iowa case of Sickles v. Lauman, 169 N. W. 670, annotated in 4 A.L.R. 1073, by one who purchases the business from the vendee and takes an assignment of the covenant, although the covenant does not run to assigns of the original vendee.

Criminal law — *possession of vehicle with manufacturer's numbers removed.* Making possession of a motor vehicle with the manufacturer's serial numbers removed a penal offense is held a valid exercise of the police power, in People v. Johnson, 288 Ill. 442, 123 N. E. 543, annotated in 4 A.L.R. 1535.

Damages — *destruction of truck — loss of use.* The damages for wrongful destruction of a truck belonging to one who is operating it daily over a scheduled route, as a common carrier, are held in Louisville & Interurban R. Co. v. Schuester, 183 Ky. 504, 209 S. W. 542, to include the rental value of the use of a truck to take its place in the business until a new one can be procured.

The measure of damages for the destruction of or injury to a commercial vehicle is treated in the note appended to this case in 4 A.L.R. 1344.

Damages — *extending highway across railroad track — alarm bell.* The damages to be allowed a railway company for the extension of a highway across its tracks at grade are held in the Missouri case of Franklin County v. Missouri P. R. Co. 210 S. W. 874, not to include the expense of installing and maintaining an alarm bell, necessary to warn travelers of trains approaching the crossing.

Whether expenses of flagmen, gates, and automatic signals are items of compensation to a railroad company, across whose tracks a highway is laid, is treated in the note appended to this case in 4 A.L.R. 133.

Divorce — *insanity of defendant — effect.* The insanity of defendant is held no bar to the prosecution of a divorce suit for a cause which accrued before the insanity began, in the Virginia case of Wright v. Wright, 99 S. E. 515, which is accompanied in 4 A.L.R. 1331, by a note on insanity as affecting divorce for desertion, living apart, or nonsupport.

Exemption — *partnership property — right of member of firm.* That a member of a partnership cannot claim his personal exemption out of the property of the partnership which is levied on to pay a partnership debt, is held in the Iowa case of Jensen v. Wiersma, 170 N. W. 780, which is accompanied in 4 A.L.R. 298, by a note on the right of an individual partner to an exemption out of partnership property.

Husband and wife — *criminal conversation — action by wife.* A married woman is held entitled in Turner v. Heavrin, 182 Ky. 65, 206 S. W. 23, annotated in 4 A.L.R. 562, to maintain an action against her husband's paramour for criminal conversation with him, where the statute empowers her to sue as a single woman, for the protection of her rights, without the consent of her husband.

The rule in the majority of jurisdictions is that a wife has a right of action for criminal conversation.

Husband and wife — *husband as wife's agent — charge on building.* Where a man undertakes to construct a building on his wife's land with money furnished by her, he is held in Banks v. Pullen, 113 Miss. 632, 74 So. 424, 4 A.L.R. 1013, to be using means furnished by her to carry on business in his own name, within the meaning of a statute making him her agent, under such circumstances, as to all persons dealing with him without notice, and the wife is, therefore, liable for materials furnished him for the building, although she has paid him therefor, and her property may be sold to satisfy the claim.

Husband and wife — *power of wife to submit to operation.* A married woman in full possession of her faculties is held in Burroughs v. Crichton, 48 App. D. C. 596, annotated in 4 A.L.R. 1529, to have full power, without consent of her husband, to submit to a surgical operation upon herself.

Insurance — *accident — overturning of automobile.* Driving an automobile at a high and unsafe rate of speed, or in a manner justly to convict the driver of negligence, is held not to conclusively show that an injury caused by the overturning of the car was not an accident within the meaning of an insurance policy, in the Iowa case of Rowe v. United Commercial Travelers, 172 N. W. 454, annotated in 4 A.L.R. 1235.

Insurance — *against hail — loss by rust.* Rust in grain due to delayed maturity because of injury by hail is held within a policy insuring against injury by hail in the South Dakota case of Reeves v. National F. Ins. Co. 170 N. W. 575, although the policy provides against liability except for such portion as is traceable directly to hail.

The construction of hail insurance policies is discussed in the note following this case in 4 A.L.R. 1293.

Insurance — *fidelity — information — overdrawing of account.* That one applying for fidelity insurance for his employee cannot withhold from the insurer information that the employee is in the habit of overdrawing his account, and that it is overdrawn at the time the application is made, is held in National Surety Co. v. Globe Grain & Mill. Co. 256 Fed. 601, annotated in 4 A.L.R. 552. This decision rests on the general rule of insurance law that a policy is avoided by the misstatement or concealment of a material fact.

Insurance — *exception of military service.* Exception of death while in the military service is held not effected in the Wisconsin case of Kelly v. Fidelity Mut. L. Ins. Co. 172 N. W. 152, by a provision in an insurance policy that if assured shall, within

two years from date, engage in any military service in connection with actual warfare, and shall die within such time as a result, directly or indirectly, of so engaging, the liability of insurer shall be limited to premiums paid.

The validity, construction, and effect of provisions in a life or accident policy, in relation to military service, are treated in the note which accompanies this decision in 4 A.L.R. 845.

Intoxicating liquor — *definition.* An instruction to the jury "that, in order to make any fluid or liquid an intoxicating drink, it must be capable of producing intoxication, in the usual sense and common acceptation of the term intoxication, that is, it must have in it a sufficient amount of alcohol to produce intoxication when consumed in sufficient quantities," properly propounds the law in such cases, and it was held not error to reject other instructions propounding a different rule of liability, in State v. Henry, 74 W. Va. 72, 81 S. E. 569, 4 A.L.R. 1132.

Intoxicating liquor — *definition.* "Intoxicating liquor," as this phrase is used in the Prohibitory Liquor Statutes of Oklahoma, is an alcoholic liquor, and in order to come under the ban of the law such liquor, it is held in Estes v. State, 13 Okla. Crim. Rep. 604, 166 Pac. 77, must either contain more than ½ of 1 per cent of alcohol, or a sufficient quantity of it, in a liquor or compound capable of being used as a beverage, to intoxicate a human being.

The test of the intoxicating character of liquor is discussed in the note appended to this decision in 4 A.L.R. 1135.

Intoxicating liquor — *Jamaica ginger.* Jamaica ginger manufactured for flavoring and medicinal purposes, and containing from 28 to 90 per cent of alcohol, is held to be within a statute forbidding the sale of intoxicating liquors of whatever origin, in the Maine case of State v. Intoxicating Liquors & Vessels, 106 Atl. 711, 4 A.L.R. 1128.

Landlord and tenant — *surrender of written lease.* That a written lease for a term of years may be surrendered by agreement of the parties thereto, without the execution and acceptance of a release in writing, is held in Rogers v. Dockstader, 90 Kan. 189, 133 Pac. 717. If the facts and circumstances show a mutual understanding and agreement to terminate the relation of landlord and tenant, a surrender of possession by the latter, and the recognition of another tenant by the former, such lease will be deemed to have been "surrendered."

The decisions on surrender of a written lease by parol are gathered in the note appended to this case in 4 A.L.R. 663.

Limitation of actions — *on bank check.* The limitation period upon a check delivered and accepted in the place where the drawee bank is located is held in the Oregon case of Colwell v. Colwell, 179 Pac. 916, annotated in 4 A.L.R. 876, to begin to run at the close of the next business day after such delivery.

Mechanics' lien — *contract by husband — liability of wife's property.* To charge a wife's property with a mechanics' lien for materials purchased by her husband, it is held in Wilson v. Andalusia Mfg. Co. 195 Ala. 477, 70 So. 140, 4 A.L.R. 1016, that he must assume to contract for her, and the contract be subsequently ratified by her with full notice or knowledge of its nature.

Mechanics' lien — *husband as agent for wife.* If a husband contracts, in his own name, with the knowledge of his wife, for the erection of a building on her land, and the

work is carried on also with her knowledge and consent, it is held in Milligan v. Alexander, 72 W. Va. 615, 79 S. E. 665, that she will be presumed to have constituted her husband her agent, and her property is liable to a mechanics' lien for such improvement.

This case is accompanied in 4 A.L.R. 1022, by a note on the enforceability of a mechanics' lien against the property of a married woman for work performed or materials furnished under a contract made with her husband.

Mechanics' lien — *notice of repairs — consent to lien.* The mere fact that one tenant in common has notice that repairs are being made on the property by a purchaser under executory contract is held in the Massachusetts case of Roxbury Painting & Decorating Co. v. Nute, 123 N. E. 391, annotated in 4 A.L.R. 680, not to establish consent to a change of the contract of sale so as to authorize the purchaser to establish mechanics' liens against his interest in the property.

It is apparently settled in the jurisdictions where this question has arisen that mere knowledge on the part of the vendor or lessor that improvements are contemplated or being made by his lessee or vendee, and failure on his part to object thereto, is not such consent as will support a mechanics' lien against his interest; and this is especially true where the lessor or vendor would have no right to prevent the making of the improvement, and will receive no benefit therefrom.

Mechanics' lien — *property of married woman — husband's order.* That no promise on the part of a married woman to pay for materials purchased by her husband for use in improving her property, which will support a mechanics' lien, can be implied where the title to the property is in a trustee, who has absolute power to manage the property, is decided in Hines v. Hollingsworth, 178 Ky. 233, 198 S. W. 716, 4 A.L.R. 1018.

Mortgage — *duress — innocence of mortgagee.* A mortgage, it is held in the Florida case of Smith v. Commercial Bank, 81 So. 154, will not be set aside because of duress exercised upon the mortgagor in its procurement, such duress not being participated in by the mortgagee.

The validity of a contract executed under duress exercised by a third person is discussed in the note appended to this case in 4 A.L.R. 862.

New trial — *abuse of witness.* Abuse by counsel of a witness in referring to him in argument as a drunkard and guttersnipe, without excuse or support in the evidence, is held to require the withdrawal of a juror and continuance of the case, in Dannals v. Sylvania Twp. 255 Pa. 156, 99 Atl. 475, annotated on the subject of Abuse of witness by counsel as ground for new trial or reversal, in 4 A.L.R. 409.

Notice — *contents of instrument — witness to signature.* The weight of authority is in accord with the conclusion reached in Daniel v. Tolon, 53 Okla. 666, 157 Pac. 756, annotated in 4 A.L.R. 704, that one who signs an instrument as an attesting witness is not chargeable as a matter of law with notice of the contents of the instrument.

Nuisance — *lunch wagon in street.* The maintenance of a lunch wagon in a public street, to the obstruction of ingress and egress to and from abutting property, and injurious competition with business therein conducted, is held to constitute a nuisance in the California case of Strong v. Sullivan, 181 Pac. 59, annotated in 4 A.L.R. 343.

Nuisance — *pesthouse.* A pesthouse in a thickly settled residence

district of a city is held a nuisance, in the Michigan case of Birchard v. Board of Health, 169 N. W. 901, annotated in 4 A.L.R. 990.

Officer — *honorably discharged soldier or sailor — abolition of office.* A statute enacting that no honorably discharged soldier, sailor, or marine in public employment shall be removed except for cause and after a hearing is held in Harker v. Bayonne, 85 N. J. L. 176, 89 Atl. 53, 4 A.L.R. 193, not to preclude the abolition by a municipal corporation of an office or position held by one of the designated class, when such action is taken in good faith and for the betterment of the public service.

Partnership — *forcible dissolution — right of action.* Where a partner breaks the covenants of a partnership, and thereby wrongfully, by force and fear, causes its dissolution, the other partner, it is held in the Oklahoma case of Farwell v. Wilcox, 175 Pac. 936, annotated in 4 A.L.R. 156, may maintain an action of assumpsit against him for the damages resulting.

Perjury — *testimony given under compulsion.* That one cannot avoid liability for perjury committed before a grand jury, because the testimony was given under compulsion, if not under duress, is held in the Texas case of Hardin v. State, 211 S. W. 233, annotated in 4 A.L.R. 1308.

Perpetuity — *bequest to maintain burial lots.* A bequest to an unincorporated cemetery association, of a fund to be held in trust in perpetuity to maintain burial lots, is held to violate the rule against perpetuities, in the Illinois case of McCartney v. Jacobs, 123 N. E. 557, annotated in 4 A.L.R. 1120.

Physicians — *liability for acts of substitute.* That a physician who sends a substitute, upon being unable to fill a professional engagement, is not answerable for his negligence or malpractice, unless the substitute acts as his agent in performing the service, is held in the Texas case of Moore v. Lee, 211 S. W. 214, annotated in 4 A.L.R. 185.

Physician — *liability for ordering hot iron for patient.* A physician who has performed an operation upon a patient, who is unconscious, is held not negligent in the Wisconsin case of Malkowski v. Graham, 172 N. W. 785, in ordering the patient's attendant to keep her warm by placing hot irons in bed with her, so as to render him liable in case the patient is burned by the negligent use of the iron.

This case is followed in 4 A.L.R. 1524, by a note on the duty of a physician or surgeon to warn or instruct a nurse or attendant.

Proximate cause — *failure to warn of danger from creosote — internal injuries.* The mere fact that there is no proof that internal injuries might have been foreseen as an ordinary or natural consequence of the failure of a master to warn his servant of the danger of applying creosote to timber is held not to warrant the court in holding that such injuries were not proximate results of neglect to warn, in Louisville & N. R. Co. v. Wright, 183 Ky. 634, 210 S. W. 184, which is annotated in 4 A.L.R. 478, on the question of the liability of a master for an injury to his servant from an unknown danger, where he failed to inform him of a known danger.

Proximate cause — *letting dilapidated building — landlord's liability.* Letting a building for a shooting gallery, with walls so dilapidated that bullets glancing from the targets are likely to pass through and injure per-

sons in the vicinity, is held the proximate cause of injury to a bystander by a bullet taking such course in the Utah case of Larson v. Calder's Park Co. 180 Pac. 599, annotated in 4 A.L.R. 731.

Railroad — *action against Director General — validity.* The Act of Congress of March 21, 1918, providing for the operation of transportation systems while under Federal control, provides that actions at law may be brought against carriers, and judgment rendered, "as now provided by law." Order No. 50, issued by the Director General of Railroads October 28, 1918, required that actions for death or injury to person growing out of the possession, control, or operation of any railroad by the Director General shall be brought against the Director General, and not otherwise. In so far as such order prohibits the maintenance of such an action against the railroad company, it is held to be in conflict with Act of Congress March 21, 1918, § 10, and void, in the Minnesota case of Lavalle v. Northern P. R. Co. 172 N. W. 918, 4 A.L.R. 1659.

Treaty — *effect on state.* A treaty made under the authority of the United States and within the scope of the legitimate powers vested by the Constitution is the supreme law of the land; its provisions supersede and render nugatory all conflicting provisions in the laws or Constitution of any state; and, in case such conflict arises, it is held the duty of the judges of every state to uphold and enforce the treaty provisions, in the North Dakota case of Trott v. State, 171 N. W. 827, which is accompanied in 4 A.L.R. 1372, by a note on the relation of a treaty to state and Federal law.

NEW BOOK ANNOUNCEMENTS

HOLMES INCOME TAX, 3rd edition *$10.00*

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"RULING CASE LAW, VOL. 26" (Edward Thompson Company, Northport, N. Y.; Bancroft-Whitney Company, San Francisco, Cal.; The Lawyers Co-operative Publishing Company, Rochester, N. Y.).

This new volume in the Ruling Case Law series embraces the subdivisions of the law alphabetically included between "Taxation" and "United States." It comprises, among other subjects, Telegraphs and Telephones, Trademarks and Tradenames, Treaties, Trial, and Trusts. The book contains 1,464 pages besides the index, and is uniform in binding, and typographical and editorial excellence, with the earlier volumes of the set.

The publication of this series began six years ago, and it is a matter of pride to the publishers that they have been enabled to issue the consecutive volumes on approximately schedule time in spite of adverse manufacturing conditions. Until recently it was expected that the set would consist of about thirty volumes, averaging 1,200 pages each. By increasing the number of pages per volume to about 1,350 it is now possible to finish the work in twenty-eight volumes. Its early completion will render wholly available, under the 400 titles of the law treated, the enduring decisions of the American and English courts on which the R. C. L. is founded. The work has met the cordial approval of both bench and bar.

"THE SOLDIER-LAWYER DIRECTORY." (The Soldier-Lawyer Directory Company, 420 American Bank Building, Tampa, Fla.) $4.25 del'd.

It is estimated that about one fourth of the lawyers of America answered the call to the colors during the World War. It is proposed to include the names of these men in this new Legal Directory, in which are now listed approximately 7,000 names, covering every state and practically every county in the United States and Canada. This will make possible the exchange of business between those who rendered military service. The idea is said to have the approval of the American Bar Association and the bar associations of all sections.

Mr. Flatdweller Sees His Lawyer.

(Continued from page 65)

covenant that the premises are described as a 'dwelling house,' or there may be a stipulation that the lessee shall not use the premises other than as a dwelling house. No help for us in that, though. I suppose there was nothing in your lease about a dwelling"—directing his gaze toward his client.

"No, the premises are simply described as apartment No. 6."

"And they were not furnished, so that these decisions as to furnished houses or apartments are not applicable?"

"No—only the gas range and the refrigerator," replies Mr. Flatdweller.

"Not enough," says the lawyer; "it has been held that the presence in an apartment of a refrigerator, window blinds, and radiators does not bring it within the rule.* I guess that in order to get you off we shall have to make out a case of misrepresentation, or fraud, or constructive eviction."

"Misrepresentation is no good. Nothing was said about the condition of the apartment—it was simply a case of 'there it is; take it or leave it,'"

"I'm not so sure of that," Mr. Wiseman replies thoughtfully. "You say your wife and the girls have sore throats. It is just possible that the premises were infected. The preceding tenant—what was the matter with him?"

"Diphtheria, report says. Jumping Jehosaphat!" exclaims the deeply concerned tenant, half rising in his chair; "I must get my family out of there before another hour goes by."

"Listen to this," says the lawyer in a soothing voice, as he reads from the open volume in his hands. "'If the lessor has been guilty of fraudulent concealment, the lessee may either abandon the premises and rescind the lease, or continue in possession and hold the lessor responsible in damages,'—I omit the references to the decisions,—'subject, however, to the qualification that he must not risk the health of himself or his family by unnecessarily subjecting them to deleterious conditions,'—which you do not wish to do. (Again reading.) 'There can be no fraudulent withholding of information where there exists no obligation to disclose it; and the question, therefore, arises, Under what circumstances does a duty to disclose exist? Such a duty may be said to exist where the prospective lessee makes an express inquiry calling for a statement of fact, and not a mere expression of opinion, or where there is some hidden defect rendering the premises unfit for habitation, not discoverable upon ordinary examination, and known to the lessor at the time of making the lease, such as the fact,'—here is what I am looking for,—'that the premises are infected with disease, or that a condition of affairs exists likely to endanger the health of the occupants before the actual condition of the premises becomes known to them.' So if we can show that Skinnem rented you the premises knowing them to have been infected with a contagious disease, or that the plumbing was in such shape as to be a menace to health, you may claim your right to rescind the lease."

"Does it make any difference if the premises were disinfected by the health department?" asks Mr. Flatdweller.

"Yes," the lawyer replies. "It has been held that the landlord is not

*St. George Mansions v. Hetherington, 4 A.L.R. 1450.

bound to inform the tenant that an infectious disease has existed upon the premises if it has been disinfected by presumably competent persons; though he remains liable in damages if the precautions taken prove ineffectual."

"It's a question, then, if we can get him on that. Of course, I don't know whether the place was disinfected or not. How about that other ground you mentioned a minute ago—constructive eviction?" he asks hopefully.

"If a landlord puts a tenant out, that's an actual eviction, and puts an end to the lease; if, by reason of the landlord's act or breach of duty, the tenant is obliged to move out, there is a constructive eviction."

"My case exactly (brightening); we can't keep warm, we can't keep well, and we positively refuse to furnish any more free lunches to Skinnem's bedbugs and cockroaches,—in short, we can't go on living there. It is just as much an eviction as if we were thrown out bodily."

"No, it's not quite so simple as that," replies the legally trained mind. "In order to claim a constructive eviction you must first abandon the premises within a reasonable time—which you intend to do, so we need not go further into that matter—and you must show that their unfitness for occupancy is due to some breach of duty on the part of the landlord."

"Surely," Mr. Flatdweller questions, "it is up to him to keep the plumbing in order?"

"Not unless he has expressly undertaken to do so. There is no implied warranty, upon the letting of a dwelling, that the plumbing is not defective, and it has even been held that a statement by a landlord that the plumbing is in good order is to be regarded merely as the expression of an opinion, and not as the assertion of a fact, unless he knew it to be in bad condition. However, as the lessee of an apartment, you are in a rather

more favorable situation. The courts have held that the failure of the lessor of an apartment to remedy defects in the general plumbing system—as distinguished from the plumbing in the individual apartment—or in water or waste pipes belonging to a portion of the premises remaining under the landlord's control, warrants the tenant in abandoning the premises and claiming a constructive eviction."

"Three cheers for the courts!" bursts from Mr. Flatdweller. Then, subsiding a bit, he asks: "And is the landlord answerable for the bugs?"

"Where premises are let unfurnished, the presence of bedbugs or waterbugs will not warrant the tenant in throwing up the lease unless there was fraudulent misrepresentation or deceit on the part of the landlord in regard to them; or unless the condition is one within the power of the landlord, and not within that of the tenant, to abate, as where the invasion proceeds from premises under the control of the landlord. The same rule applies where the premises are overrun by rats or mice."

"The invasion proceeds, all right," wearily answers the client; "we have taken the usual measures, but the bugs keep coming faster than we can kill them off."

"Now about the failure to furnish heat," continues Mr. Wiseman, again taking up the book. We hear him reading: "'A contract for a heated apartment requires such heat as will render the temperature of the rooms reasonably comfortable for the average person, generally, during the time they are customarily occupied, due regard being had to kind of use for which each room is intended, and excluding lapses due to sudden and severe changes in temperature and occasional inattention by the janitor, or to the necessary making of repairs, or other unforeseen or excusable causes.' You see, the failure to furnish heat must extend over a material period of time in order to afford a basis

for claiming a constructive eviction; mere temporary inconvenience is not enough."

"Our inconvenience has been more than temporary," stoutly replies the troubled tenant. "We haven't been warm enough since we moved in."

"True," the attorney answers; "but you have been in possession only two weeks, I think you said. Hardly long enough to establish a complete failure to perform; however, the point is worth taking."

"Our best bet, then, is the sewer gas and the diptheria?" is Mr. Flatdweller's next question.

"I think so; though there may be something in your other grounds for complaint. We had better get the evidence in shape; Skinnem will sue, of course."

"Let him. I'll see that his old apartment house gets the proper sort of advertising."

"Skinnem is too old a hand to be afraid of a little publicity. You'll have to stand a suit. Never does for a landlord to let anyone think he is afraid of a lawsuit; people would take advantage of him."

"The law gives the landlord rather the best of it, too, it seems to me," complains the wrought-up tenant.

"It does," his lawyer replies. "Therefore, we must be prepared to establish a strong case. We had better get a chemist and a medical man to make tests for sewer gas in the apartment; also a reliable plumber to testify as to where the source of difficulty is located. Your family can attest to the presence of the cockroaches and bedbugs, also the lack of heat, and if you can bring in anyone else to bear them out, so much the better."

As the curtain goes down on the act, leaving the two engaged in discussing details, we wonder just what the outcome will be in the impending suit.

E. S. O.

The Humorous Side

Delayed Application. An insurance man tells this one:

"Not long ago there rushed into one of our offices in the South a very excited woman; so excited, in fact, that she was out of breath and could speak only with difficulty.

"'What's the trouble?' asked one of the clerks.

"'I want a policy at once—at once,' exclaimed the woman, when she had recovered sufficiently to articulate. 'Our home is on fire.'"—Los Angeles Times.

He Read the Application. Old Giles was taking out an insurance policy on his life, and he and his wife were puzzling over the forms that had arrived for him to sign.

"Yer see this?" said Giles; "it says: 'Age of father, if living.' I suppose I must fill it in."

The form was at last filled, and a few days later Giles received a visit from the agent.

"What do you mean by your form?" said the agent. "You state your father's age as 110. That is ridiculous."

"No, it ain't," replied Giles. "Your form says, 'if living,' and that's the age he'd be if he was alive now."—Boston Globe.

Gave the Sign of Distress. The judge made jokes, the witnesses looked weary, the counsel declaimed and cross-examined, the twelve good men and true twiddled their thumbs and the usher ushed whenever necessary. Altogether it was a model court of law.

"Now, ma'am," cried the cross-examining King's counsel, "was the defendant's air when, as you allege, he promised to marry you, perfectly serious, or was it, on the contrary, jocular and full of levity?"

"It was all ruffled," replied the plaintiff, "with 'im runnin' 'is 'ands through it!"—London Tit Bits.

A Skeptical Jury. An Idaho lawyer tells of a case tried in that state some years ago, on which occasion the judge, an Easterner who desired to display his learning, instructed the jury very fully, laying down the law with the utmost authority. But the jurors, after deliberating some hours, found themselves unable to agree. Finally, the foreman asked for additional instructions:

"Judge, here's the trouble," said he. "The jury wants to know if what you told us was really the law, or only just your notion."—Harper's.

Not Guilty. Col. Southerland: "Well Rastus, did the judge find you guilty of stealing chickens?"

Rastus: "No, suh, Colonel; I was released on s'picion."—N. Y. Evening Post.

Picturesquely Put. Disgusted cop (at crossing). "Some chauffeur, you are! Say, if you were crossing the Sahara desert, you'd run into a hydrant."—Boston Transcript.

The Court's Decision. Plaintiff's counsel. "Your Honor, unfortunately, in this case I am opposed by the most unmitigated scoundrel—"

Defendant's counsel. "My learned friend is such a notorious perverter—"

Judge. "Will counsel kindly confine their remarks to such matters as are in dispute?"—Pittsburgh Chronicle-Telegraph.

An Expert Witness. "You swear that this man is no chicken stealer," demanded the judge.

"Yessur," replied Rastus Rashley. "Da's whut Ah said, suh."

"What do you know about the facts in this case?"

"Ah isn' s'posed to know nuffin' 'bout de facks in de case, suh. Ah is an expert witness foh de defense."

BEGIN HERE & SAVE TIME

The Slogan of This New and Final Desk Book

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